the laws of the Republic and has not contravened or conducted (herself) in a manner detrimental to the interests of the Republic' has not been controverted by the respondents; (2) as at that time, having been a permanent resident for more than five years, she was eligible for Singapore citizenship and had been invited to apply for it, it must be assumed that she had an unblemished record. Moreover, it was submitted, as the Minister had not furnished the court with the information to substantiate the decisions he made under s 8 (3)(k) of the Act, the court should infer that his decisions were irrational or unreasonable.

I reject this submission. Whatever the ground relied on may be, the burden is on the applicant to make out her case against the Minister. The fact that the applicant believed that she had been a law-abiding resident in Singapore does not prove that the Minister had done her wrong. She was not to know of the reliable information the Minister had against her. Equally, the fact that an officer in the Public Service Division of the Ministry of Finance and a clerical officer in the Registry of Citizens had sent routine letters to the applicant informing her that she was eligible to apply for Singapore citizenship was not proof that the applicant was a person of unblemished record. It was not the duty of those two officers to inquire into the character of the applicant or investigate into the conduct of the applicant's stay in Singapore. They were merely monitoring the length of stay of permanent residents in the country. For these reasons, I find as a fact that the two factual bases do not and cannot support the fallback argument for the applicant.

As for the respondents' case, I accept the evidence of the Deputy Secretary that when he submitted the applicant's appeal he sent all relevant documents to the Minister for his consideration. I accept the evidence for the Minister that he gave due and careful consideration to the appeal of the applicant before he rejected it. As was said, the fact that between 1982 and February 1987, a period of four years and nine months, though there were many tens of thousands of foreigners resident and working in Singapore, not more than a dozen aliens had been deemed by the Minister to be undesirable immigrants under s 8(3)(k) of the Act shows that the Minister exercises his powers under this provision most carefully and very sparingly. Since the Minister, responsible to Parliament, had given the applicant's case his personal consideration, and there was no evidence to show that he had acted unfairly, the application for an order of certiorari to quash the decisions of the Minister and the Controller must be dismissed with costs.

Order accordingly.

Solicitors: *Dube & Co.*

Reported by *Wong Kim Fatt*

Re Solid H Gold Engineering Works, ex parte the Official Assignee

HIGH COURT (SINGAPORE) – IN BANKRUPTCY NO 66 OF 1987
CHAN SEK KEONG J
9 SEPTEMBER 1988

Bankruptcy – Receiving order made against firm – Adjudication order made against persons as partners of firm – Change in partners – One of the partners not a partner when judgment debt was incurred – Defects in proceedings – Orders rescinded and annulled – Bankruptcy Rules 1967, rr 104, 238 & 240 – Subordinate Courts Rules 1969, O 69 r 5(3) – Bankruptcy Act (Cap 20, 1985 Ed), ss 3 & 133

In this case bankruptcy proceedings were founded upon a judgment for $19,000 obtained against the firm for goods sold and delivered when Ong Hock Choon, Ong Ah Seng and Kwek Meme were partners of the firm. The writ was issued against the firm as defendant and served by substituted service by posting a copy on the front door of the place of business of the firm. At the date of the writ the said Kwek Meme had retired as a partner. Ong Hock Choon had also retired from the partnership on 27 June 1986 and thus when the bankruptcy notice was issued on 7 January 1987 against the firm, the firm was a sole proprietorship. The bankruptcy notice was intended to be issued against the firm, in which Ong Hock Choon and Ong Ah Seng were partners. The bankruptcy notice was served on Ong Ah Seng as a partner; at that time he was the sole proprietor. The bankruptcy petition was served on 11 June 1987 and by this time the firm had become a partnership again with the entry of Lim Eng Lan as partner on 7 April 1987. However, the statement filed pursuant to r 104 of the Bankruptcy Rules wrongly named Ong Hock Choon and Ong Ah Seng as partners. Receiving orders were made against the firm and adjudication orders were made against Ong Hock Choon and Ong Ah Seng as partners thereof. The Official Assignee contended that both the said orders were bad and ought to be rescinded. It was contended (a) that the combined effect of rr 238 and 240 of the Bankruptcy Rules 1967 was that a person who was not a partner at the date of the receiving order could not be adjudicated a bankrupt as the receiving order made against the firm did not operate against him. Therefore the adjudication order made against Ong Hock Choon was invalid; (b) under r 238 of the Bankruptcy Rules, the receiving order operated against Lim Eng Lan at the date of the order. As Lim Eng Lan could never be made bankrupt on a judgment debt for which she was not liable the receiving order must be bad; (c) the judgment debt was not one on which execution had not been stayed as required by s 3(1)(i) of the Bankruptcy Act.

Held, allowing the application of the Official Assignee:

(1) There were a number of defects in the proceedings and no amendment could be made to the bankruptcy notice and the petition in order to validate the receiving order or the adjudication orders. The judgment debt was not one on which execution had not been stayed and no amendment to the notice or the petition can cure this defect.

(2) The application of the Official Assignee is allowed and the receiving order and adjudication order made are rescinded and annulled.

Cases referred to

1 *Re Ide* (1886) 17 QBD 755 (refd)
2 *Re Wenham* [1900] 2 QB 698 (distd)

3 *Lovell & Christmas* v *Beauchamp* [1894] AC 607 (refd)
4 *Re a Debtor (No 26 of 1983)* [1984] 2 All ER 257 (distd)
5 *Re the Debtors* (1923) 92 LJ Ch 120 (refd)
6 *Re a Debtor (No 24 of 1935)* [1936] Ch 292 (folld)

Legislation referred to
Bankruptcy Act (Cap 20, 1985 Ed) ss 3, 102, 133
Bankruptcy Rules 1967 rr 104, 238, 240
Subordinate Courts Rules 1969 O 69 r 5(3)
Bankruptcy Act 1883 [UK] s 115

Lee Poh Choo (Mrs) for the Official Assignee.
K Ramalingam for the judgment creditors.

Cur Adv Vult

Chan Sek Keong J: This is an application by the Official Assignee to rescind and annul a receiving order made against a firm called Solid H Gold Engineering Works ('Solid Gold') and the adjudication orders made against Ong Hock Choon ('OHC') and Ong Ah Seng ('OAS') as partners thereof. The said orders were made on 13 November 1987. On that day, the partners of Solid Gold were OAS and one Lim Eng Lan ('LEL'). The latter was not a partner when the judgment debt was incurred.

The judgment of $19,000 with interest and costs upon which the bankruptcy proceedings were founded was obtained on 8 October 1986 by default of appearance to a writ issued on 21 August 1986 in DC Suit No 10312 of 1986 for goods sold and delivered during the period when OHC, OAS and one Kwek Meme were partners of Solid Gold. The writ was issued against the firm as defendant and served by substituted service by posting a copy thereof on the front door of the place of business of the firm.

At the date of the writ, the said Kwek Meme had retired as a partner (on 4 August 1984). The retirement of Kwek Meme ought to have been known to the plaintiffs, the petitioning creditors here ('the creditors'), as their solicitors had on 19 June 1986 made a search in the Registry of Companies and Businesses on the firm. No further search was thereafter made until the present application had been taken out by the Official Assignee.

OHC also retired from the partnership on 27 June 1986 and thus when the bankruptcy notice was issued on 7 January 1987 against Solid Gold, the firm was a sole proprietorship. The bankruptcy notice was intended to be issued against Solid Gold in which both OHC and OAS were partners. The bankruptcy notice was served on OAS as a partner. It was not served on OHC. There is no evidence that when OAS was served with the bankruptcy notice, he was told that he was being served as a partner of a firm in which OHC had been a partner. He was then the sole proprietor of the firm. Likewise, in regard to the bankruptcy petition which was served on 11 June 1987 and issued more than four months after the service of the bankruptcy notice. By this time, the firm had once again become a partnership with the entry of LEL into the firm as a partner on 7 April 1987. Solid Gold was no longer the firm of yesteryear. However, this fact was again not known to the creditors as their solicitors had not made an official search before issuing the petition. The statement filed pursuant to r 104 of the Bankruptcy Rules 1967 testified to this omission. It named OHC and OAS as the partners of the firm as at the date of filing. The statement was therefore wrong.

Thus inexorably, because of the form of the bankruptcy notice and of the petition, a receiving order was on 13 November 1987 made against the firm of Solid Gold and adjudication orders were made against OHC and OAS as partners thereof.

As might be expected, the Official Assignee, on discovering the above facts, decided to challenge the validity of the receiving order against the firm and the adjudication orders against OHC and OAS. His case was that both the said orders were bad and ought to be rescinded.

The assistant official assignee relied firstly on the combined effect of r 238 and r 240 of the Bankruptcy Rules 1967 ('BR'). They provide as follows:

> 238 A receiving order made against a firm shall operate as if it were a receiving order made against each of the persons who, at the date of the order, is a partner in that firm.
>
> 240 No order of adjudication shall be made against a firm in the firm name, but it shall be made against the partners individually.

The argument was that r 238 and r 240 when read together meant that a person who was not a partner at the date of the receiving order could not be adjudicated a bankrupt as the receiving order against the firm did not operate against him. Therefore the adjudication order against OHC was invalid. It was a simple argument based on a plain reading of those two rules.

The second submission was that the receiving order against the firm was also bad by reason of the effect of BR 238. Although this submission was not elaborated upon, I understood the assistant official assignee to contend that under BR 238, the receiving order operated against LEL at the date of the order; as LEL could never be made bankrupt on a judgment debt for which he was not liable the receiving order must be bad.

The third submission was that the default judgment upon which the bankruptcy notice was founded was not a judgment on which execution had not been stayed as required by s 3(1)(i) of the Bankruptcy Act (Cap 20, 1985 Ed). It was argued that as the writ had not been served on either OAS or OHC as a partner, and as neither of them had entered appearance as such, leave of the court was required under O 69 r 5(3) of the Subordinate Courts Rules 1969 to execute on the judgment; in the present case, such leave had not been obtained. Reference was made to *Re Ide*[1] in support of this submission.

The case for the creditors was that the multitude of avoidable errors committed in these proceedings had not affected the validity of the receiving order and the adjudication orders. Counsel for the creditors made three arguments. Firstly, it was contended that where a judgment has been entered against a firm, a bankruptcy notice or petition addressed to the firm and served on one partner is a good foundation for a receiving order against the firm. Reference was made to the decision of the Court of Appeal in *Re Wenham*[2] in support of this proposition and as an answer to the first two arguments of the assistant official assignee. Secondly, it was argued that the adjudication order against OHC was also valid and effective as both the bankruptcy notice and the petition were deemed to have been served on him personally by virtue of BR 236. Thirdly, any defect in the proceedings could be cured under s 133 of the Bankruptcy Act (Cap 20, 1985 Ed) as no substantial injustice had been done to OAS and/or OHC and the court should do so in the present case: reference was made to *Lovell & Christmas* v *Beauchamp*.[3]

In view of counsel's reliance on *Re Wenham*,[2] it becomes necessary to examine what the actual decision in that case was. There, the creditors had obtained a judgment in default of appearance against a dissolved partnership firm 'W Brothers' for a debt incurred during the partnership. The writ had been served on each of the former partners, JW and TW. A bankruptcy notice in the usual form, following the judgment, was then addressed to W Brothers and served personally on each of the former partners. The notice not having been complied with, the judgment creditors presented a petition against JW alone. Wright J at first instance and the Court of Appeal decided that the writ having been served on JW and TW personally, the judgment was enforceable against them, notwithstanding that the firm had been dissolved, and since the bankruptcy notice followed the judgment, being addressed to the firm by the firm name, and the same having been served on JW and execution on him not having been stayed, there was no reason for not making a receiving order against JW. The Court of Appeal further decided that even if there were an irregularity or defect in the proceedings (in that the bankruptcy notice was addressed to W Brothers whereas the petition was addressed to JW), that defect or irregularity was curable under s 143 of the Bankruptcy Act 1883 (which is in pari materia with s 133 of the Bankruptcy Act (Cap 20, 1985 Ed)) as no substantial injustice had been done to JW.

In *Re Wenham*,[2] counsel for JW had put forward the argument that s 115 of the Bankruptcy Act 1883 (equivalent to s 102 of the Bankruptcy Act (Cap 20, 1985 Ed)) when read with r 262 of the Bankruptcy Rules 1886 (equivalent to BR 238) contemplated that bankruptcy proceedings in the name of the firm could not be taken after the dissolution of the firm. Section 115 reads as follows:

> Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings, or be proceeded against under this Act in the name of the firm ...

Lord Alverstone MR, delivering the leading judgment of the Court of Appeal, rejected this argument in these words:

> I think the words 'being partners' are intended to mean 'who have carried on business in partnership for the purpose of the liability which is sought to be enforced'. In my opinion dissolution does not enable partners to get rid of the liability to have proceedings taken against them under s 115 for the purpose of enforcing payment of a partnership debt. I think the true meaning of the 115th section is, that if persons have been partners in a business, then bankruptcy proceedings can be taken against them in the partnership name.
>
> It is said that cannot be the meaning of the section because r 262 provides that 'a receiving order made against a firm shall operate as if it were a receiving order made against each of the persons who at the date of the order is a partner in that firm'. Rule 262 is an enabling rule, enabling a creditor to get a separate receiving order against each individual partner, and that it cannot be held to cut down the rights and liabilities which are created by s 115. Therefore, so far as the bankruptcy proceedings are concerned, I think there was no objection to the bankruptcy notice being addressed to 'Wenham Brothers', although as a matter of fact at the time when the notice was issued 'Wenham Brothers' was no longer a partnership. It does not matter for this purpose whether the creditor knew of the dissolution or not, but it would be a strange thing if a secret dissolution could put an end to the right of the partnership creditor. The claim in the action was in respect of a liability incurred by the members of the firm while they were partners.

Rigby LJ thought that there was no defect or irregularity in the proceedings but made no express reference to s 115 or r 262 in his judgment. However, Collins LJ had doubts about the effect of s 115 read with r 262. His Lordship said:

> ... there was a perfectly good judgment obtained under the Rules of the Supreme Court against John Wenham and his brother, they having been members of the firm which was dissolved. But then, when we come to the bankruptcy proceedings, we get into a new code. We leave the old one behind us, and we take up that which the statute has prescribed. We find the bankruptcy statute is dealing with the case of a creditor desiring to make a firm of partners bankrupt. By that statute the legislature has provided certain machinery for so doing, and without that machinery the purpose cannot be accomplished in bankruptcy; it must be carried out under the machinery of the Bankruptcy Act alone. It seems to me that, whether by oversight or not, s 115 only contemplates proceedings by or against persons who are partners at the time of the proceedings. It says that 'any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings, or be proceeded against under this Act in the name of the firm, but in such case the court may on applica-

> tion by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the court may direct'; and then the subsequent proceedings, such as the receiving order, and so forth, are to be a natural sequence of the bankruptcy proceedings commenced under the Act against the firm. Then r 262 under the Act says that the receiving order shall operate as if made against each of the persons who at the date of the order is a partner in that firm. That rule contemplates proceedings only against persons who are partners at the time. It is only by putting some slight strain on the words of the section that you can construe it to mean persons who were partners at one time, but who are not at the time proceedings were taken. But whether that is the meaning or not, I think this is obviously a case in which the court should exercise the power of amendment, if it has that power; and it seems to me that the 143rd section amply covers this particular case.

Counsel for the creditors relied on the extended meaning given to r 262 by the Master of the Rolls in support of his contention that in the present case BR 238 operated not only against OHC but also against OAS, they 'being partners' for the purpose of s 102 of the Bankruptcy Act. Therefore, it was argued, the receiving order against Solid Gold, which as a partnership of OHC and OAS had been dissolved, and the adjudication orders against OHC and OAS were properly made. The whole of his submission amounts to this. 'We now know that when we issued the bankruptcy notice, OAS was the sole proprietor of the firm; and when we issued the bankruptcy petition, OAS and LEL were the partners of the firm. However, our intention was to issue the bankruptcy notice and the petition against the firm when it had OAS and OHC as partners. Never mind that all the relevant bankruptcy rules refer to firms as they exist at the time of service or the time of the making of the receiving order and the adjudication orders. Please read the rules as if they refer to the partnership of Solid Gold as intended by us and ignore the existing firm.' Can any submission of this nature, if accepted, be more destructive of the entire 'machinery of the Bankruptcy Act'?

In *Re Wenham*,[2] the language of the relevant rule could be strained to make JW a bankrupt without doing substantial injustice to him. The situation here is entirely different. In my view, these differences between the two situations, in addition to making *Re Wenham*[2] inapplicable also serve to reinforce the doubts of Collins LJ as to the correctness of Lord Alverstone MR's strained construction. The differences are as follows: (i) in the present case, unlike in *Re Wenham*,[2] the writ had not been served on OAS or OHC as a partner and neither had entered appearance, and therefore the judgment was not one on which execution had not been stayed in respect of the several property of the partners; (ii) here, at the date of the bankruptcy notice, the firm was trading as a sole proprietorship, whereas in *Re Wenham*[2] there was no firm by that name in existence; (iii) here, OAS was served with the bankruptcy notice as a partner when he was a sole proprietor and he was also served with the bankruptcy petition as a partner with OHC when in fact he was at that time a partner with LEL; (iv) at the date of the bankruptcy petition and the making of the receiving order and the adjudication orders, Solid Gold was a different firm altogether from that liable under the judgment debt.

On the facts of this case, the receiving order was made against a firm called Solid Gold. In my view, on a plain reading of BR 238, the receiving order operated against OAS and LEL as partners. This was so whether or not the creditors were ignorant of the existence of the new partnership or had intended to proceed against the previous firm. To read BR 238 to apply only to the previous firm would not only give a wholly artificial meaning to it but to restrict its application to dissolved firms only. There is no justification for this. Plainly, the receiving order made in these proceedings had the result of making the joint property of OAS and LEL available to meet the claims of creditors which claims could only be made against the joint property of OAS and OHC (and Kwek Meme).

I find no reason to ignore the reality of the existence of the firm of Solid Gold which was altogether different from the judgment debtors at all material stages of the bankruptcy proceedings and, instead, treat the entire proceedings as if they were begun against Solid Gold as a partnership of OAS and OHC for no purpose other than to bring the fact situation within *Re Wenham*.[2] In my view, *Re Wenham*[2] has no application to the present case.

There were other defects in the bankruptcy proceedings. Firstly, the bankruptcy notice was served on OAS as a partner when he was a sole proprietor. It could not have been good service on OHC as BR 236 had no application for the reason that the partnership firm was a different firm from that liable under the judgment debt. BR 236 provides as follows:

> Any notice or petition for which personal service is necessary shall be deemed to be duly served:
>
> (a) on all members of a partnership firm, if it is served at the principal place of business of the firm in Singapore on any one of the partners, or on any person having at the time of service control or management of the partnership business there;
>
> (b) on a person carrying on business in a name or style other than his own, if it is served on any person having at the time of service control or management of the business in Singapore.

It could only have been good service on OAS alone, as a sole proprietor. To strain the language of BR 236 in order to apply para (a) to the dissolved firm would, in my view, exceed the proper limits of statutory interpretation. For the same reason, the service of the bankruptcy petition

on OAS was also not service on OHC under BR 236(a). Secondly, the creditors filed a statement under BR 104(1) that OAS and OHC were partners of Solid Gold. Since BR 104(1) requires the statement to contain the names of the partners as they appear under the Registration of Businesses Act at the date of the presentation of the petition, there was a failure to comply with this rule. The language of this rule is so clear that again it is impossible to stretch it to include partners who have withdrawn from the partnership at the date of the filing of the petition. In other words, given the facts of this case, the creditors could never have complied with BR 104(1) if they had intended to proceed against Solid Gold as a dissolved partnership of OAS and OHC. Prima facie, this must mean that something was seriously wrong with the procedure adopted by the creditors in this case.

The next point taken by the assistant official assignee is founded upon the decision of *Re Ide*.[1] In that case, the Court of Appeal held that a creditor, who had obtained judgment against a firm and required but had not obtained the leave of court under O 52 r 10 of the Rules of the Supreme Court 1970 (equivalent to O 69 r 5(3) of the Subordinate Courts Rules 1986) to issue execution against a partner thereof, could not issue a bankruptcy notice against a partner as the judgment was not one on which execution had not been stayed as required by s 3 of the Bankruptcy Act 1883. In *Re Ide*[1] the bankruptcy notice was issued against a partner and not against the firm. In the present case, the bankruptcy notice was issued against the firm and not against a partner. The leave of the court to execute against the property of a firm on a judgment debt against a firm is not required by the Rules. In *Re a Debtor (No 26 of 1983)*[4] Gibson J delivering the leading judgment of the Court of Appeal (and with which Sir Robert Megarry V-C agreed), said:

> In the present case the position, as it seems to me, is different. The judgment was duly obtained against the firm. Omitting immaterial words, RSC O 81, r 5(1) provides:
>
> 'Where a judgment is given or order made against a firm, execution to enforce the judgment or order may ... issue against any property of the firm within the jurisdiction.'
>
> There was therefore no need for leave to issue execution against the firm. There was no stay of the judgment. The bankruptcy notice was issued against the firm and not against any individual partner. Section 119 of the 1914 Act permits proceedings against a firm in the firm's name. The bankruptcy notice was therefore properly issued against the firm. Had it been against the partners individually then, of course, *Ex p Ide, re Ide* (1886) 17 QBD 755 would have applied. Indeed a petition can be issued against a firm in the firm name subject to complying with the requirements of r 148 as to information about the partners.
>
> In my judgment, therefore, there is nothing in the 1914 Act or in the Rules made thereunder, or in the Rules of the Supreme Court, and there is no authority, to show that leave must be obtained before the issue of a bankruptcy notice against a firm, as distinct from one against an individual partner.

It could therefore be argued that *Re Ide*[1] has no application to the present case as here the creditors have, following *Re a Debtor (No 26 of 1983)*,[4] issued the bankruptcy notice against the firm. There is, however, a fundamental difference between the facts in *Re a Debtor (No 26 of 1983)*[4] and those in the present case. In that case, the debtor firm had continued to trade as a partnership of the same partners; it was therefore to be expected that there would be partnership property to levy execution upon. Here, the firm was a sole proprietorship at the time the bankruptcy notice was issued; it was not to be expected there would be any partnership property available for execution upon. However, if, in this case, OAS and OHC were to be lawfully made bankrupts as a result of the failure of OAS to comply with the bankruptcy notice which was issued against the firm, the effect would have been the same as if execution proceedings had been levied against their several property as such would be the only property available for distribution to the creditors. As the judgment debt in this case was one in which execution had been stayed, the creditors would by the mere artifice (if they had knowledge of the facts) or by the mere blunder (if they did not, as here, have knowledge of the facts) of issuing a bankruptcy notice against Solid Gold, in circumstances where no partnership property was available for execution, achieve what they could not have otherwise done, ie without having to obtain the leave of the court. In my view, the court should ignore the form of the notice and look at the substance of what it was trying to achieve. What the notice was intended to do, and which it has achieved in this case, was to make available for distribution to the creditors in bankruptcy proceedings the several property of the previous partners. Such a result was contrary to the statutory requirement that no act of bankruptcy could be committed upon a failure to comply with a bankruptcy notice founded on a judgment which has not been stayed. Accordingly, I find that the form of the bankruptcy notice in the present case was inappropriate to the circumstances of this case and was defective. Order 69 r 5(1) of the Subordinate Courts Rules would not save it.

Finally, I would refer to the decision of the Court of Appeal in *Re the Debtors*.[5] In that case, the creditors had recovered a judgment against the firm of A & S and a bankruptcy notice following the judgment had been served on A only but not at the principal place of business of the firm. A petition was presented against the firm and a receiving order was made against the firm of A & S other than S. The form of the order was adopted from the decision of *Lovell & Christmas* v *Beauchamp*,[3]

where the House of Lords held that where a partner was not liable for a debt of the firm (in that case, the partner was an infant), a receiving order could not be made against the firm simply but could be made against the firm 'other than' the infant partner. The Court of Appeal declined to apply *Lovell & Christmas* v *Beauchamp*[3] as in that case there was proper service on the firm whereas, in the case before the court, service of the notice not having been made at the principal place of business of the firm, r 279 of the Bankruptcy Rules 1915 (equivalent to BR 236) could not operate to deem service on S. The court held that the receiving order even in that form was wrong. In the present case, neither the bankruptcy notice nor the petition was served at the principal place of business of the dissolved firm (ie as constituted by OAS and OHC) as such firm could not have a place of business: see Lord Wright MR in *Re a Debtor (No 24 of 1935)*[6] at pp 300-301. For this reason, the receiving orders made against Solid Gold were, a fortiori, bad.

In *Re the Debtors*,[5] it was argued by the creditor that since a receiving order could have been made and ought to have been made against A only and if it had been so made it would have been regular and in order, the defect was formal and could be remedied and no injustice would have been done by making the receiving order against A and the court ought to amend the receiving order. The court rejected this argument. Lord Sterndale MR said:

> Some cases are strictly cases of formal defects, and others of irregularities. I doubt whether this is a formal defect within the meaning of s 147 of the Bankruptcy Act 1914, but I think that as it is a question of bankruptcy, which is a serious matter, we ought not to amend in this case.

Scrutton LJ said:

> As to the power of the court to amend, can it be said that what has happened in this case is a formal defect? What has happened is that an order has been drawn up against a firm except as to one partner, although there has been no good service on the firm. In *Lovell & Christmas* v *Beauchamp* [1894] AC 607, amendment was ordered because in that case there had been a good service on the firm. I do not think that that authority applies where there has been no good service on a firm. The order as drawn up would have a different effect to an order against an individual. It is a defect involving substantial consequences. I think that the amendment asked for goes beyond the powers conferred by s 147 of the Act.

In my view, the defects in these proceedings were much more serious than the defect in *Re the Debtors*.[5] There were also more defects. I do not think that any amendment can be made to the bankruptcy notice and the petition in order to validate the receiving order or the adjudication orders against OAS and/or OHC. The judgment debt was not one on which execution had not been stayed and no amendment to the notice or the petition can cure this defect.

For the reasons given above, the application of the Official Assignee is allowed. The receiving order and adjudication orders made on 13 November 1987 are rescinded and annulled. The creditors will pay the costs of the Official Assignee.

Order accordingly.

Solicitors: *WT Woon & Co.*

Reported by *Prof Ahmad Ibrahim*

The 'American Oklahoma'

Bank of America National Trust & Savings Association v 'American Oklahoma' (Owners of) (United States Trust Company of New York & Ors, Interveners)

HIGH COURT (SINGAPORE) – ADMIRALTY IN REM NO 46 OF 1987
LAI KEW CHAI J
30 AUGUST 1988

Shipping – Admiralty in rem – Plaintiffs made loans and advances to defendants – Loan secured by first preferred ship mortgage created while vessel was not in Singapore – Mortgage not registered in Singapore as a charge – Whether valid – Plaintiffs applied for declaration of validity of mortgage and sum claimed – Intervention by third interveners – Competing claims over vessel – Companies Act (Cap 50, 1985 Ed), ss 131 & 141

By this admiralty in rem writ, the plaintiffs claimed the sum of US$154,156,319 and US$16,474 being loans and advances made to or on account of the United States Lines Inc ('US Lines'), the owners of the 4258 TEU container ship known as 'American Oklahoma'. They proceeded under s 3(1)(c) of the High Court (Admiralty Jurisdiction) Act (Cap 123, 1985 Ed) and relied on a first preferred ship mortgage executed on 7 May 1985 and recorded in the Port of Registry of New York, USA. The mortgage was executed on the same day after it was delivered in Korea to US Lines. The vessel was not in Singapore at the time the mortgage was created although it did call at the port of Singapore in 1985 and 1986. US Lines became registered in Singapore as a 'foreign company' under the Companies Act (Cap 50, 1985 Ed) ('the Act') on 20 September 1984.

On 24 November 1986, US Lines filed a petition for relief under the Bankruptcy Code of the United States of America. In another Admiralty in Rem Suit No 572 of 1986 filed in the High Court, Fal Bunkering Co Ltd, the third interveners, claimed US$69,500 for bunkers supplied to a sister vessel of the defendants. The vessel was arrested and it was sold pendente lite in August 1987. In the meantime, in April 1987, the third interveners obtained leave to intervene in these proceedings as persons interested in the res of the action. Unless the third interveners could invalidate the first preferred ship mortgage of the plaintiffs on the vessel, they would not recover anything. The plaintiffs filed and served the statement of claim and as no defence was filed by US Lines, the plaintiffs filed a notice of motion for judgment in default of defence. By the motion the